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UNITED STATES BANKRUPTCY COURTSOUTHERN DISTRICT OF CALIFORNIA  
U.S. BANKRUPTCY CT.  
SO. DIST OF CALIF.

JUDGE PETER W. BOWIE, PRESID

CLERK, US BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
DEPUTY

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IN THE MATTER OF:

NO. 05-05926-PB

FRANCIS J. LOPEZALLEGED DEBTOR'S MOTION TO DISMISS OR TRANSFER  
INVOLUNTARY PETITION TO THE NORTHERN DISTRICT OF FLORIDAREPORTER'S TRANSCRIPT OF PROCEEDING

SAN DIEGO, CALIFORNIA

MONDAY, AUGUST 22, 2005

U.S. BANKRUPTCY COURT  
DEPARTMENT THREE  
325 WEST F STREET  
SAN DIEGO, CA 92101BY COLLETTA JOHNSON, CSR, RPR  
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APPEARANCES

FOR CREDITOR:

ROBBINS & KEEHN  
BY: L. SCOTT KEEHN  
530 B STREET, SUITE 2400  
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FOR DEBTOR:

LAW OFFICE OF M. JONATHAN HAYES  
BY: M. JONATHAN HAYES  
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(818) 710-3656

1 SAN DIEGO, CALIFORNIA, MONDAY, AUGUST 22, 2005, 2:45 P.M.

2

3 MS. PEARSON: FRANCIS J. LOPEZ, ALLEGED DEBTOR'S  
4 MOTION TO DISMISS OR TRANSFER INVOLUNTARY PETITION TO  
5 THE NORTHERN DISTRICT OF FLORIDA.

6 MR. KEEHN: GOOD AFTERNOON, YOUR HONOR. SCOTT KEEHN  
7 FROM THE FIRM OF ROBBINS & KEEHN APPEARING ON BEHALF OF  
8 PETITIONING CREDITOR, ALAN STANLY, WHO IS PRESENT AND AT  
9 COUNSEL TABLE.

10 THE COURT: OKAY.

11 MR. HAYES: GOOD AFTERNOON, YOUR HONOR. JONATHAN  
12 HAYES, H-A-Y-E-S, FOR THE ALLEGED DEBTOR.

13 THE COURT: MR. HAYES, YOUR MOTION.

14 MR. HAYES: YOUR HONOR, THE MOTION ASKS THAT THE  
15 INVOLUNTARY BANKRUPTCY BE DISMISSED AS A BAD FAITH  
16 FILING AS A LITIGATION TACTIC, OR IN THE ALTERNATIVE,  
17 ASK THE COURT TO ABSTAIN FROM HEARING THE INVOLUNTARY AT  
18 ALL, OR IN THE ALTERNATIVE, ASK THAT THE CASE BE  
19 TRANSFERRED TO FLORIDA BECAUSE THAT'S WHERE THE DEBTOR  
20 LIVES. THAT'S WHERE HIS CREDITORS ARE. THAT'S WHERE  
21 HIS FAMILY IS. THAT'S WHERE HIS PROPERTY IS.

22 I DON'T KNOW HOW MUCH THE COURT WANTS.

23 THE COURT: I'VE READ THE PAPERS.

24 MR. HAYES: RIGHT. I'M CERTAINLY WILLING AND READY  
25 TO ANSWER ANY QUESTIONS THE COURT MAY HAVE.

1 THE COURT: I ASSUME YOU APPRECIATE THAT I CAN'T  
2 RELY ON YOUR CLIENT'S CONCLUSORY ASSERTION THAT THERE  
3 ARE MORE THAN 12 CREDITORS TO SIMPLY USE THAT AS A BASIS  
4 FOR DISMISSAL; RIGHT?

5 MR. HAYES: YES. I ACCEPT THAT.

6 THE COURT: ALL RIGHT.

7 MR. HAYES: I BELIEVE THERE IS MORE THAN AMPLE  
8 EVIDENCE THAT IT'S A LITIGATION TACTIC. THESE PARTIES  
9 HAVE BEEN GOING AT IT FOR A FEW YEARS NOW. THIS IS A  
10 BUSINESS DIVORCE. THERE IS LITIGATION PENDING NOW  
11 BETWEEN THEM. AND THIS INVOLUNTARY WILL THROW THAT OFF  
12 THE TRACK, BRINGING IN A TRUSTEE. IT JUST SEEMS TO BE  
13 TRANSPARENT TO ME THAT THE PURPOSE OF THE BANKRUPTCY IS  
14 NOT TO ALLOW MR. LOPEZ'S PROPERTY TO BE ADMINISTERED FOR  
15 THE BENEFIT OF HIS CREDITORS.

16 THERE'S A COMMENT THAT -- WELL, I THINK THERE'S  
17 FRAUDULENT CONVEYANCES, THAT IS SILLY FOR ONE THING, BUT  
18 THERE'S NO EVIDENCE OF WHAT IT MIGHT BE; WHAT HE MIGHT  
19 HAVE TRANSFERRED; WHERE IT MIGHT BE. THERE'S THESE  
20 PROPERTIES THAT THESE CORPORATIONS THAT THE TESTIMONY --  
21 THE STATEMENTS IN THE DECLARATIONS -- ARE CONSISTENT  
22 WITH THE TESTIMONY IN THE DEBTOR'S EXAM. THEY'RE  
23 DEFUNCT CORPORATIONS.

24 BUT IF THE COURT ISN'T WILLING TO JUST DISMISS  
25 IT AS BEING IN BAD FAITH, THEN WE WOULD ASK THAT THE

1 CASE BE TRANSFERRED BACK TO FLORIDA AND MOVE THERE.  
2 THAT'S WHERE HE LIVES NOW. IT'S BEEN MORE THAN TWO  
3 YEARS. HE'S ONLY COME TO CALIFORNIA A COUPLE OF TIMES  
4 SINCE. THAT'S, FRANKLY, INVOLVED WITH THESE LITIGATION  
5 MATTERS. I PERSONALLY HAVE NEVER MET HIM. THIS IS THE  
6 SECOND MATTER I'VE HANDLED FOR HIM. I KNOW HE  
7 DOESN'T -- I SHOULD SAY --

8 THE COURT: DOES HE REALLY EXIST?

9 MR. HAYES: HE DOES. SOMEBODY WITH HIS NAME CALLED  
10 ME THIS MORNING, AND I RECOGNIZED IT WAS THE SAME VOICE  
11 AS I HAD HEARD BEFORE.

12 THE COURT: WHOEVER THAT IS; RIGHT?

13 MR. HAYES: THANK YOU.

14 I CAN ANSWER MORE QUESTIONS.

15 THE COURT: NO. GO AHEAD MR. KEEHN.

16 MR. KEEHN: THANK YOU, YOUR HONOR. FIRST, YOUR  
17 HONOR, BEFORE I ADDRESS THE ISSUES, I WANT TO THANK BOTH  
18 THE COURT AND COUNSEL FOR THE ACCOMMODATION IN  
19 SCHEDULING. AND I THINK YOUR BROTHERS FORWARD OF  
20 BROADWAY WILL THANK YOU AS WELL. WE WERE SUCCESSFUL IN  
21 OUT ATTEMPTS TO SETTLE THAT MATTER.

22 BUT ADDRESSING THESE ISSUES, YOUR HONOR, AND I  
23 THINK IT'S FAIRLY CLEAR ON THE RECORD NOW THAT WE'RE NOT  
24 REALLY SUGGESTING, AS THE MOVING PAPERS INDICATED, THAT  
25 THE MATTER BE DISMISSED FOR LESS THAN 12 CREDITORS. I

1 THINK EVERYONE UNDERSTANDS HOW THAT NEEDS TO BE PROVEN  
2 UP.

3 AS FAR AS BAD FAITH LITIGATION TACTICS, YOUR  
4 HONOR, I THINK A COUPLE OF THINGS THAT ARE IN THE RECORD  
5 ARE INTERESTING TO NOTE.

6 FIRST, THERE WAS NO EVIDENTIARY OBJECTION TO OR  
7 CONTROVERSY OVER THE FACTS EMBODIED IN MR. STANLY'S  
8 DECLARATION, WHICH I THINK FAIRLY AND ADEQUATELY  
9 ESTABLISHES BOTH FINDINGS AS FAR AS THIS CASE IS  
10 CONCERNED. IF YOU SEARCH THE RECORD OF THIS CASE, THE  
11 ONLY CREDITOR THAT IS DISCLOSED AS TO IDENTITY AND  
12 AMOUNT OF THE CLAIM IS MR. STANLY. HIS CLAIM, AS THE  
13 EVIDENCE SHOWS, IS A JUDGMENT CLAIM, PRINCIPAL AMOUNT OF  
14 \$50,000. NOW, SOMEWHERE IN THE REPLY PAPERS, I BELIEVE,  
15 THE CONTENTION IS ADVANCED THAT THIS IS SOMEHOW A  
16 DISPUTED CLAIM. WELL, AS YOU CAN SEE FROM EXHIBIT 1 TO  
17 THE STANLY DECLARATION, IT'S THE RESULT OF THE JUDGMENT.  
18 AND THERE'S NO STAY OF THE EXECUTION.

19 SO EVEN IF THE MATTER IS ON APPEAL, I THINK FOR  
20 PURPOSES OF DETERMINING WHETHER THIS IS A BONA FIDE  
21 DISPUTE, AS THAT TERM IS USED BY THE *BANKRUPTCY CODE*, IT  
22 DOESN'T EXIST.

23 SO HERE WE HAVE THE ONLY CREDITOR WE REALLY  
24 KNOW ABOUT IN THE MATTER, WHO HAS A FIVE-FIGURE CLAIM  
25 THAT CAN'T FAIRLY BE CHARACTERIZED AS THE SUBJECT OF

1 CONTROVERSY. WHO IS HERE. WHO'S CLAIM ORIGINATED HERE  
2 IN THE COURTS OF CALIFORNIA. AND HE HAS FILED THE  
3 BANKRUPTCY PETITION HERE FOR THE PURPOSE OF ATTEMPTING  
4 TO COLLECT IT HERE. AND I WILL GET INTO THIS IN A  
5 LITTLE MORE DETAIL, BUT WHEN IT COMES TO THE QUESTION OF  
6 WHETHER WHEN AN ORDER FOR RELIEF IS ULTIMATELY ENTERED  
7 IN THIS CASE, AND SOME TRUSTEE IS SADDLED WITH THE  
8 CONSIDERABLE UNDERTAKING OF SIFTING THROUGH MR. LOPEZ'S  
9 HISTORY OF TRANSACTIONS AND EVENTS, HE WILL BE LOOKING  
10 TO WITNESSES THAT ARE HERE IN CALIFORNIA.

11 NOW, I THOUGHT IT INTERESTING THAT COUNSEL SAID  
12 THAT THERE WAS SOME VAGUE REFERENCE TO FRAUDULENT  
13 TRANSFER, BUT HE DIDN'T HAVE ANY IDEA WHAT THAT IS. I  
14 FOUND THAT INTERESTING BECAUSE, AND I OFFERED THE PROOF  
15 ON NOVEMBER 1ST OF 2004, MR. LOPEZ VERIFIED SUPPLEMENTAL  
16 RESPONSES TO INTERROGATORIES IN THE STATE COURT ACTION  
17 REFERRED TO AS *LOPEZ V. STANLY*. WHAT WAS INTERESTING IN  
18 HIS RESPONSE, SUPPLEMENTAL RESPONSE TO INTERROGATORY  
19 9.1, WHICH I DIDN'T HAVE THE TEXT OF IT IN FRONT OF ME,  
20 SO I HAD TO PARAPHRASE HIS ANSWER, BUT HE'S SAYING --

21 THE COURT: IF IT WAS IN 9.1, IT MUST HAVE BEEN ONE  
22 YOU WROTE; RIGHT?

23 MR. KEEHN: IT MAY HAVE BEEN ONE OF THE -- I BELIEVE  
24 IT WAS THE COURT'S, YOUR HONOR. SO, NO, I CAN'T TAKE  
25 CREDIT FOR THAT. I WOULD LIKE TO.

1 BUT IT ADDRESSES DAMAGES. AND HE CLAIMS  
2 \$50,000 OF DAMAGES AGAINST MR. STANLY BECAUSE HE HAD TO  
3 SELL HIS HOME FOR \$50,000 LESS THAN ITS FAIR MARKET  
4 VALUE. SO WHAT WE HAVE IS A JUDICIAL OMISSION BY THIS  
5 ALLEGED DEBTOR THAT HE HAS SOLD HIS PRIMARY ASSET, HIS  
6 RESIDENCE, FOR AT LEAST \$50,000 -- THAT'S WHAT HE ADMITS  
7 TO IT BEING -- UNDER THE MARKET. HE ALSO SAYS IN THIS  
8 DECLARATION THAT HE'S BEEN A FLORIDA RESIDENT SINCE JULY  
9 OF 2003. STILL THAT RESIDENCE OCCURRED SHORTLY BEFORE  
10 MR. LOPEZ REMOVED HIMSELF TO FLORIDA.

11 NOW, THAT RAISES A REALLY INTERESTING PROBLEM  
12 FOR WHATEVER TRUSTEE IS ULTIMATELY SADDLED WITH THE  
13 BURDEN OF FIGURING OUT WHAT WAS WHAT WITH REGARD TO  
14 MR. LOPEZ. AND THE REASON THAT IT'S SUCH AN INTRIGUING  
15 QUESTION IS BECAUSE SECTION 308 OF THE NOW FAMOUS  
16 *BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT*,  
17 MAKES IMMEDIATELY EFFECTIVE ITS AMENDMENTS TO SECTION  
18 522(O) .

19 NOW, THAT SECTION, THE COURT WILL RECALL,  
20 PROVIDES A TEN-YEAR LOOK BACK FOR TRANSACTIONS,  
21 BASICALLY, THAT RESULT IN DISPOSITIONS THAT MAY HAVE  
22 BEEN MADE FOR THE PURPOSE OF HINDERING, DELAYING, OR  
23 DEFRAUDING CREDITORS, AND NOW RESULTS IN A HOMESTEAD.

24 WELL, FLORIDA'S HOMESTEAD IS LEGENDARY UNDER  
25 \$25,000. I CAN'T CITE YOU THE EXACT STATUTORY

1 PROVISION, BUT IF THE COURT WANTS IT, I CAN PROVIDE IT.  
2 AND SO WE SEE THAT WITHIN A MONTH OF HIS ESTABLISHING  
3 HIS RESIDENCE IN FLORIDA, MR. LOPEZ ADMITS TO SELLING  
4 HIS HOMESTEAD HERE FOR LESS THAN FAIR VALUE AND ACQUIRES  
5 A HOME IN FLORIDA WHERE HE CAN NOW CLAIM HIS \$125,000  
6 EXEMPTION. NOW, WHAT THE AMENDMENT TO 522(O) PUTS INTO  
7 THE HANDS OF THE TRUSTEE IS THE ABILITY TO SET ASIDE  
8 \$50,000 WORTH OF THAT EXEMPTION.

9 AND WHERE WILL THE WITNESSES COME FROM IF THE  
10 TRUSTEE CHOOSES TO LITIGATE THAT ISSUE? THEY'RE NOT IN  
11 FLORIDA. THEY'RE ALL IN CALIFORNIA. THE REALTOR THAT  
12 SOLD IT IS HERE IN CALIFORNIA. ANY OF THE PARTIES THAT  
13 MADE OFFERS TO MR. LOPEZ ARE HERE IN CALIFORNIA. IN  
14 OTHER WORDS, THE ONLY TRUSTEE THAT WOULD BE  
15 DISADVANTAGED BY HAVING THE CASE MOVED TO FLORIDA IS THE  
16 FLORIDA TRUSTEE.

17 AND I SUBMIT TO YOU THAT IF THIS CASE IS  
18 TRANSFERRED TO FLORIDA, THAT TRUSTEE, BELEAGUERED AS HE  
19 WILL BE WITH THIS CASE, IS MORE PROBABLY THAN NOT GOING  
20 TO THROW UP HIS HANDS AND ABANDON ALL OF THESE POTENTIAL  
21 CLAIMS. AND YOU WILL HAVE ISSUES THAT COULD RESULT IN  
22 SIGNIFICANT CONTRIBUTIONS TO THE ESTATE GOING UNATTENDED  
23 TO. WHY? BECAUSE THE WITNESSES AREN'T IN FLORIDA.

24 BUT WE'RE NOT LEFT WITH JUST THE HOMESTEAD.  
25 BECAUSE THERE IS A GAGGLE OF WITNESSES THAT PERTAIN TO

1 AN ASSET, WHICH ACCORDING TO, ONCE AGAIN, MR. LOPEZ'S  
2 NOVEMBER 1ST RESPONSE TO SUPPLEMENTAL RESPONSE TO  
3 INTERROGATORY 9.1, SAYS THAT HE DOESN'T KNOW FOR SURE,  
4 BUT HIS DAMAGES RANGE SOMEWHERE -- AGAIN, MR. STANLY --  
5 RANGE SOMEWHERE BETWEEN \$800,000 AND A MILLION FIVE.

6 NOW, WHAT DAMAGES ARE THOSE? THOSE ARE DAMAGES  
7 THAT HE HAS ALLEGED IN THE ACTION PENDING IN SUPERIOR  
8 COURT, THE *LOPEZ V. STANLY* ACTION. EVERY WITNESS ON THE  
9 WITNESS LIST IN THAT CASE, OTHER THAN MR. LOPEZ HIMSELF,  
10 IS HERE IN CALIFORNIA. AND IF, IN FACT, HIS CLAIMS ARE  
11 VALID, AND I WILL FOOTNOTE FOR THE RECORD THAT WE  
12 CONTEND THAT THEY ARE NOT, AND I'VE REVIEWED THE MATTER  
13 WITH TRIAL COUNSEL FOR THAT ACTION AND SHARE HIS  
14 CONFIDENCE THAT MR. STANLY WILL BE VINDICATED, AND THAT  
15 THE ACTUAL OBLIGATIONS WILL GO IN THE OTHER DIRECTION.  
16 BUT TWO MOST VALUABLE POTENTIAL SOURCES IN A THEORETICAL  
17 CONTEST FOR THIS ESTATE, THE LITIGATION ITEM AND THE  
18 HOMESTEAD ITEM. WITNESSES HERE IN CALIFORNIA.

19 NOW, WE'RE NOT THROUGH YET BECAUSE I WILL  
20 INDICATE TO THE COURT THAT AFTER REVIEWING THE REPLY, I  
21 WENT BACK TO THE JUDGMENT DEBTOR'S EXAM, EXCERPTS OF  
22 WHICH WERE INCLUDED IN OUR -- IN MR. STANLY'S --  
23 DECLARATION, AND I WILL MAKE AS AN OFFER OF PROOF THAT  
24 ON PAGES 49 TO 50 OF THAT EXAMINATION, MR. LOPEZ ADMITS  
25 TO HAVING SOLD HIS ROLEX WATCH TO ONE OF HIS ATTORNEYS,

1 MR. FISCHBACH, FOR THE PRINCELY SUM OF \$2,500. NOW, I'M  
2 NO EXPERT ON ROLEX WATCHES, BUT MY GUESS IS THAT ANY  
3 TRUSTEE WORTH HIS SALT IS GOING TO WANT TO KNOW A LITTLE  
4 BIT MORE ABOUT THAT TRANSACTION. MR. FISCHBACH IS HERE  
5 IN CALIFORNIA.

6 AT PAGES 55 AND 56, I'LL REPRESENT TO THE COURT  
7 AND MAKE AS AN OFFER OF PROOF, MR. LOPEZ ADDRESSES THE  
8 ISSUE OF A JAPANESE SUIT OF ARMOR THAT HE WAS KNOWN TO  
9 POSSESS. HE CLAIMS THAT HE SOLD IT IN 2003. WHEN ASKED  
10 DID HE SELL IT IN FLORIDA, HE ANSWERED, "NO."

11 SO WE KNOW SINCE HE DIDN'T SELL IT FLORIDA, HE  
12 MUST HAVE SOLD IT IN CALIFORNIA. AND HOW MUCH DID HE  
13 SELL IT FOR? AGAIN, THE STAGGERING SUM OF \$1,500. I  
14 DON'T KNOW FROM JAPANESE SUITS OF ARMOR, BUT MY GUESS IS  
15 ANY TRUSTEE LOOKING AT THIS CASE IS GOING TO WANT TO  
16 KNOW A LITTLE BIT MORE ABOUT HOW THAT PRICE WAS DERIVED  
17 AND WHAT EVIDENCE OF VALUE THERE MAY BE.

18 I SUBMIT TO YOU THAT THOSE TRANSACTIONS, ALL OF  
19 WHICH BY MR. LOPEZ'S ADMISSION, HERE IN THE STATE OF  
20 CALIFORNIA WILL NOT BE -- FIND ANY ENLIGHTENMENT FROM  
21 WITNESSES IN THE STATE OF FLORIDA.

22 SO THE QUESTION THEN BECOMES, AS WE HAVE  
23 INDICATED IN OUR PAPERS, IN TERMS OF VENUE SELECTION, I  
24 THINK ONE POINT IS VERY SIGNIFICANT TO MAKE AT THE  
25 OUTSET. NO ONE ARGUES THAT THIS IS A TECHNICALLY

1 DEFECTIVE VENUE. THE PENDENCY OF THE PRESENT BANKRUPTCY  
2 CASE, THAT OF THE AFFILIATE, CLEARLY ESTABLISHES  
3 PROPRIETY OF VENUE HERE IN THE SOUTHERN DISTRICT.

4 HAVING FILED THE CASE AS A CREDITOR'S REMEDY,  
5 AND SOMETIMES WE GET SO WRAPPED UP IN THE DEBTOR RELIEF  
6 ASPECT OF THE BANKRUPTCY CASE, THAT WE FORGET THAT FROM  
7 THE STATUTES OF ELIZABETH I FORWARD, BANKRUPTCY LAWS IN  
8 ENGLAND AND THE UNITED STATES HAVE VERY STRONG ROOTS AS  
9 A CREDITOR'S REMEDY. MR. STANLY IS A CREDITOR. HE  
10 WOULD LIKE TO BE PAID. IF THAT'S BAD FAITH, IF THAT'S  
11 WHAT'S EMBRACED WITHIN THE CONCEPT AS FAR AS MR. LOPEZ  
12 SEES IT, THEN THIS IS IN BAD FAITH. BUT ALL HE'S DOING  
13 IS EXERCISING WHAT AMOUNTS TO A CREDITOR'S REMEDY OF  
14 LAST RESORT. THE CREDITOR'S REMEDY OF LAST RESORT ONLY  
15 BECAUSE ALL OF THE CREDITORS THAT MR. LOPEZ HAS WILL  
16 BENEFIT FROM THESE PROCEEDINGS IN THE EVENT THAT A COURT  
17 ORDER FOR RELIEF IS ENTERED.

18 SO THE CASE LAW THAT WE HAVE CITED IN OUR  
19 OPPOSING PAPERS, AND I DON'T THINK THERE'S ANY  
20 ARGUMENT -- I SAW NO ARGUMENT TO THIS IN THE REPLY, NONE  
21 AT ALL -- THAT ONCE YOU HAVE A CASE WHERE YOU CAN SAY  
22 THAT THE VENUE IS PROPER, AS A MATTER OF LAW IT'S NOT  
23 IMPROPER, THEN YOU LOOK TO THE CONVENIENCE OF THE  
24 PARTIES AND THE WITNESSES.

25 NOW, WE ARE HERE TODAY, TWO PARTIES ARGUING IN

1 A CASE THAT WILL ENCOMPASS OTHER PARTIES WHO ARE  
2 CREDITORS. WE'LL KNOW WHO THEY ARE WHEN MR. LOPEZ FILES  
3 HIS SCHEDULES. AND THEY'RE ALL GOING TO BE BENEFITTED  
4 BY THE ACTION HERE. I THINK THAT IT IS NOT THE  
5 TRANSACTIONS, OCCURRENCES, AND EVENTS THAT MR. LOPEZ HAS  
6 ENGAGED IN SINCE HE LEFT THIS JURISDICTION THAT WILL  
7 EVER BE MUCH OF AN ISSUE. MUCH MORE OF AN ISSUE WILL BE  
8 THE TRANSACTIONS, OCCURRENCES, AND EVENTS THAT OCCURRED  
9 IN THE TEN-YEAR PERIOD 19 -- EXCUSE ME -- FROM 1995 TO  
10 2003 PERIOD WHEN HE WAS DOING BUSINESS HERE IN THE  
11 SOUTHERN DISTRICT OF CALIFORNIA. THOSE ARE THE  
12 TRANSACTIONS AND EVENTS THAT ARE GOING TO BE RELEVANT.

13 AND TWO OF THE CASES THAT HAVE CLOSE PARALLEL  
14 TO OUR SITUATION HERE, THE *WAXELBAUM* CASE AND *KONA JOINT*  
15 *VENTURES* CASE -- EXCUSE ME. THE BANKRUPTCY COURT FROM  
16 HAWAII, AT LEAST WITHIN THE NINTH DISTRICT, POINTS OUT  
17 THAT'S REALLY THE KEY. WHERE ARE THOSE WITNESSES GOING  
18 TO BE? I HAVEN'T SEEN ANY EVIDENCE IN THE FORM OF A  
19 DECLARATION. AND I HAVEN'T HEARD ANY ARGUMENT THAT IT  
20 ISN'T ENTIRELY CONCLUSIONARY. AND THAT INDICATES THAT  
21 THE CONVENIENCE OF THE PARTIES, OR IN THIS CASE, THE  
22 VERY PURPOSE FOR WHICH INVOLUNTARY PROCEEDING HAS BEEN  
23 INITIATED. AND THAT IS TO PUT OUR ARMS AROUND WHATEVER  
24 ASSETS MR. LOPEZ HAS AT THE MOMENT, AND SEE TO IT THAT  
25 THEY ARE FULLY AND FAIRLY ADMINISTERED IN ACCORDANCE

1 WITH THE BANKRUPTCY LAWS OF THE UNITED STATES.

2 NOW, IN HIS DECLARATION, HIS REPLY DECLARATION,  
3 MR. LOPEZ INDICATES, FOR EXAMPLE, THAT HIS INTEREST IN  
4 CAMBRIA HOLDINGS HAS NO VALUE. IT'S DEFUNCT. HE SAYS,  
5 "IT HOLDS NO ASSETS."

6 HE DOESN'T SAY, I THINK THEY HOLD NO ASSETS.  
7 HE SAYS, "NO ASSETS."

8 WE ARE GOING TO PROVE, AND I'VE CONFIRMED  
9 THROUGH THAT ENTITY'S CPA, TAX RETURNS HAVE BEEN FILED  
10 THAT SHOW ASSETS IN THAT ENTITY. HIS INTEREST IN THAT  
11 ENTITY IS AN ASSET THAT CAN BE SOLD. HIS INTEREST IN  
12 PRISM, WHICH AT FIRST BLUSH, ONE COULD HAVE SOME  
13 SYMPATHY FOR HIS CONTENTION THAT PRISM IS A CHAPTER 7  
14 DEBTOR ITSELF; AND, THEREFORE, IT HAS NO VALUE.

15 I WOULD OFFER TO PROVE, YOUR HONOR, THAT  
16 MR. STANLY HIMSELF, THE OTHER 50 PERCENT SHAREHOLDER,  
17 HAS AN INTEREST IN PURCHASING THE REMAINING 50 PERCENT.  
18 I THINK THE RECORD THAT WE PROVIDED IN CONNECTION WITH  
19 MR. STANLY'S DECLARATION, THE FINDINGS OF FACT WHERE HE  
20 PURCHASED ASSETS OUT OF PRISM, CORROBORATED HIS  
21 CONTENTION THAT HE HAS AN INTEREST IN ACQUIRING THAT  
22 ENTITY. THAT ENTITY, I'M TOLD, HAS LOST CARRYFORWARD  
23 ATTRIBUTES THAT WOULD BE USEFUL IN THE HANDS OF A SOLE  
24 SHARE. MR. STANLY IS A CANDIDATE FOR THAT. AND HE HAS  
25 DEMONSTRATED IN THE PAST HIS WILLINGNESS AND ABILITY TO

1 PAY FOR THINGS OUT OF BANKRUPTCY, WHICH GOES TO THE  
2 BENEFIT OF ALL CREDITORS. AND SO THAT, TOO, IS A REASON  
3 FOR MAINTAINING THE ACTION HERE IN PARALLEL WITH THE  
4 *PRISM* ACTION.

5 AND, OF COURSE, AS INDICATED IN OUR OPPOSING  
6 PAPERS, IT'S ENTIRELY POSSIBLE THAT THERE WILL BE  
7 FURTHER ACTIONS IN THE *PRISM* CASE INITIATED BY  
8 MR. STANLY TO COMPEL THE COMPLIANCE WITH ORDERS MADE BY  
9 JUDGE MEYERS IN CONNECTION WITH THE SALE OF ASSETS TO  
10 HIM.

11 AS RECENTLY AS LAST WEEK, MR. LOPEZ FILED  
12 SUBSTANTIAL DECLARATIONS AND OTHER OPPOSITION IN THE  
13 *LOPEZ V. MARTIN* CASE. HE SEES VALUE THERE. I SUBMIT TO  
14 YOU THAT WHEN AN ORDER FOR RELIEF IS ENTERED, A TRUSTEE  
15 SHOULD LOOK AT THAT CASE. AND HE CAN'T DO THAT  
16 EFFECTIVELY FROM FLORIDA.

17 I THINK, IN SUM, OTHER THAN JUST A  
18 CONCLUSIONARY ALLEGATION THAT THIS IS A LITIGATION  
19 TACTIC, THERE'S NO EVIDENCE THAT SUPPORTS THAT CHARGE.

20 NOW, I UNDERSTAND THE HEAT THAT'S GENERATED BY  
21 LITIGATION. I ALSO UNDERSTAND THE PROPENSITY OF A  
22 WITNESS WHO IS A PARTY TO THAT LITIGATION CAUGHT UP IN  
23 ALL OF ITS NUANCES. HE TENDS TO VIEW HIS ADVERSARY WITH  
24 GREAT SUSPICION. AND SO IT DOESN'T SURPRISE ME THAT THE  
25 KNEE-JERK ACTION OF MR. LOPEZ TO THIS EXERCISE OF THE

1 CREDITORS' REMEDY IS: WELL, THIS MUST BE ANOTHER BAD  
2 FAITH TACTIC.

3 WELL, YOU HEARD FROM COUNSEL DURING HIS  
4 PRESENTATION. YOU HEARD HIM SAY THAT WE'RE TRYING TO  
5 "DERAIL THAT LITIGATION." AND I THINK THAT WE HAVE  
6 SUBMITTED IN OPPOSITION SUBSTANTIAL EVIDENCE TO COUNTER  
7 THAT NOTION. THERE WAS THE CORRESPONDENCE BOTH FROM OUR  
8 OFFICE AND FROM MR. DILLON'S OFFICE, THE STATE COURT  
9 COUNSEL, THAT WERE APPENDED TO MR. STANLY'S DECLARATION.

10 AND THEY ESTABLISHED TWO THINGS. THAT, NUMBER  
11 ONE, MR. STANLY IS PREPARED TO STIPULATE THAT THOSE  
12 MATTERS CAN GO FORWARD SO THAT THERE WOULDN'T BE A  
13 DELAY. THE REQUEST FOR THAT STIPULATION WAS REBUFFED.

14 MR. STANLY ALSO HAD OFFERED -- TRIED -- TO GET  
15 AN AGREEMENT AMONG COUNSEL TO CONCEDE THAT WHICH THE  
16 CASE LAW PROVIDES. AND THAT IS THAT A DEFENDANT IN AN  
17 ACTION WHERE THE TITLE 11 DEBTOR IS THE PLAINTIFF, IS  
18 NOT PRECLUDED BY THE AUTOMATIC STAY FROM THE DEFENSIVE  
19 ACTION OF A SUMMARY JUDGMENT MOTION AGAINST THE  
20 PLAINTIFF'S CASE. AND, OF COURSE, THAT'S THE REASON  
21 THAT THAT ISSUE WAS PUT BEFORE JUDGE MOOREFIELD, I  
22 BELIEVE IT IS, IN THE STATE COURT, WHO CONCURRED WITH  
23 THE AUTHORITIES THAT WERE PRESENTED. AND THAT'S WHY THE  
24 SUMMARY MOTION JUDGMENT AGAINST THE DEBTOR'S ACTION IS  
25 PROCEEDING TO HEARING SOMETIME MID-SEPTEMBER.

1           BUT MR. STANLY HAS NEVER DONE ANYTHING TO  
2 "DERAIL THAT LITIGATION." AND HE DOESN'T INTEND TO.  
3 HE'S PERFECTLY HAPPY TO PROCEED AT A PACE WITH THE  
4 TRIAL. AND IN THAT CASE, THE TRUSTEE HERE OR FLORIDA OR  
5 ANYWHERE WILL BE HANDED AN ADJUDICATION AS TO WHAT THAT  
6 ASSET, IF IT EXISTS, IS. SO THERE'S NO INTENTION TO  
7 DELAY THAT'S SUPPORTED BY THE EVIDENCE.

8           THERE'S NO EVIDENCE THAT SUPPORTS A FINDING OF  
9 BAD FAITH. WHAT MR. STANLY HAS DONE IS HE HAS ACTED  
10 QUICKLY TO ENFORCE HIS CREDITOR'S RIGHTS, AS HE SEES  
11 THEM, BEFORE HIS FEARS THAT MR. LOPEZ MAY SEEK READ  
12 ASSETS OR OTHERWISE PUT THEM BEYOND THE REACH OF HIS  
13 CREDITORS OR HIS TRUSTEE CAN COME TO FRUITION. AND,  
14 TOO, BROUGHT THIS MATTER BEFORE THE COURT AS PROMPTLY AS  
15 HE COULD IN THE HOPES THAT AS FEW AS POSSIBLE OF THE  
16 POTENTIALLY AVOIDABLE TRANSACTIONS THAT MR. LOPEZ HAS  
17 WOULD RIPEN TO A POINT WHERE THEY WERE BEYOND THE  
18 STATUTES OF LIMITATION. THE OTHER SIDE OF A CREDITOR'S  
19 REMEDY IS NOT BAD FAITH. THERE IS NO, ABSOLUTELY NO,  
20 EVIDENCE OF BAD FAITH.

21           AND ONE FINAL OFFER OF PROOF. AND I MAKE THIS  
22 AS AN OFFER OF PROOF BECAUSE I'VE ONLY SEEN THE  
23 CONFIRMING FACTS FROM THE ALTERNATIVE RESOLUTION  
24 COMPANY, I BELIEVE IT IS, THE ENTITY THAT EMPLOYED THE  
25 PRIVATE MEDIATOR, THAT VERIFIED THAT THEY ARE STILL OWED

1 IN THE NEIGHBORHOOD OF \$1,500. SO THERE'S ANOTHER  
2 CALIFORNIA CREDITOR TO BE BENEFITED. CALIFORNIA  
3 CREDITORS ARE THE ONLY ONES WE KNOW BY NAME. MR. STANLY  
4 IS LIKELY TO BE THE LARGEST IN THE CASE. AND I THINK  
5 HIS FORUM SELECTION, UNDER THE CONTROLLING PRINCIPALS,  
6 HAS TO BE GIVEN DEFERENCE.

7 AND THERE IS ABSOLUTELY NO EVIDENCE, NONE, THAT  
8 SUPPORTS THE NOTION THAT THE CREDITORS OF THIS ESTATE,  
9 IF AN ESTATE IS CREATED BY ORDER OF RELIEF, WILL BENEFIT  
10 BY A TRANSFER TO FLORIDA. MR. LOPEZ WILL BE THE SOLE  
11 BENEFICIARY OF THAT WINDFALL.

12 THE COURT: MR. HAYES.

13 MR. HAYES: THANK YOU, YOUR HONOR.

14 FIRST OF ALL, I'D LIKE TO OBJECT TO THE BULK OF  
15 MR. KEEHN'S TESTIMONY UP HERE. VERIFIED INTERROGATORIES  
16 9.1, I HAVEN'T SEEN THAT. IT ISN'T IN ANY OF THE  
17 PAPERS. THERE WAS TESTIMONY ABOUT HIS HOME BEING SOLD  
18 BEFORE FILING. I DIDN'T KNOW THAT. IT WAS NOT IN THE  
19 PAPERS. I DIDN'T ASK. I DIDN'T KNOW THAT THERE'S THIS  
20 ROLEX WATCH SOLD FOR \$2,000. AND THAT'S MR. KEEHN'S  
21 GUESS THAT IT'S WORTH MORE THAN THAT. THERE'S TAX  
22 RETURNS FROM HIS CPA FOR -- I DIDN'T GET THE NAME OF THE  
23 COMPANY -- BUT OTHER SUBSTANTIAL DECLARATIONS FILED  
24 RECENTLY.

25 BUT WHAT WAS REALLY INTERESTING TO ME IS THAT

1 THEY DID TAKE MR. LOPEZ'S DEBTOR'S EXAM IN FLORIDA.  
2 THEY ATTACHED A COUPLE PAGES OF IT TO THE MOTION -- TO  
3 THE OPPOSITION. PRESUMABLY, ALL OF THAT WOULD HAVE BEEN  
4 IN THERE. DID YOU SELL YOUR HOUSE? HOW MUCH DID YOU  
5 GET FOR IT? HOW MUCH DID YOU SELL IT FOR, THE AMOUNT?  
6 DID YOU SELL ANYTHING ELSE IN THE LAST YEAR? HAVE YOU  
7 SOLD ANYTHING IN FIVE YEARS? PRESUMABLY, THEY WOULD  
8 HAVE ASKED THAT, AND IT WOULD HAVE BEEN IN THE DEBTOR'S  
9 EXAM. THEY WOULD HAVE HAD SOMETHING TO ATTACH.  
10 MR. KEEHN'S SAID THIS IS A HISTORY OF TRANSACTIONS AND  
11 EVENTS. WHY ISN'T IT IN THERE? AND I'LL OBJECT AND ASK  
12 THAT THE COURT STRIKE ALL OF THAT TESTIMONY.

13 BUT GETTING BEYOND THE OBJECTION, I THINK  
14 MR. KEEHN SAID THAT MR. LOPEZ IS ALLEGING MILLIONS OF  
15 DOLLARS, OR, I GUESS, \$1,800,000 IN DAMAGES IN THIS  
16 LITIGATION. ACTUALLY, I DIDN'T REALIZE THAT. I HAVEN'T  
17 BEEN INVOLVED IN THE LITIGATION.

18 BUT, I MEAN, IT JUST POPPED OUT AT ME AS SO  
19 OBVIOUS, THE MOTIVATION AT THIS POINT. HE'S BEING SUED  
20 FOR A MILLION DOLLARS. IF THERE'S A CHAPTER 7, HE'LL  
21 HAVE SOMEBODY TO NEGOTIATE WITH AND TO GET THAT TO GO  
22 AWAY FOR, HOPEFULLY, SOME -- YOU KNOW, THERE WILL BE A  
23 NEW FACE ON WHO'S AFTER HIM. IT WILL BE THE TRUSTEE.  
24 THAT SHOWS THAT IT IS LITIGATION STRATEGY.

25 THE SECTION 522(O), AND THAT WORKS NO MATTER

1 WHAT STATE THE BANKRUPTCY IS IN, IF THERE'S AN OBJECTION  
2 TO THE HOMESTEAD EXEMPTION ON THE HOME THAT HE OWNS IN  
3 FLORIDA, THAT APPLIES NO MATTER WHICH STATE THE  
4 BANKRUPTCY IS IN. IT'S IRRELEVANT TO HOW THE HOMESTEAD  
5 WORKS, AT LEAST, UNDER SECTION 522(O) .

6 BUT I WOULD LIKE TO MAKE ONE LAST COMMENT. I  
7 DIDN'T FILE AN EVIDENTIARY OBJECTION TO MR. STANLY'S  
8 DECLARATION. 60 PERCENT OF IT, AT LEAST, IS ARGUMENTS,  
9 AND IT'S COMPLETELY OBJECTIONABLE, BUT I'M TRYING TO  
10 FOCUS JUST ON THE INCREDIBLE UNFAIRNESS TO AN INDIVIDUAL  
11 LIVING IN FLORIDA WITH HIS FAMILY HAVING TO GET STUCK  
12 WITH GOING THROUGH A BANKRUPTCY IN CALIFORNIA. I'M  
13 REALLY TRYING TO KEEP HIS COSTS DOWN. THAT'S WHY I  
14 LIMITED THE MOTION TO WHAT IT IS. AND I DIDN'T FILE AN  
15 EVIDENTIARY OBJECTION.

16 BUT DOES THE COURT HAVE ANY QUESTIONS OF ME?

17 THE COURT: NOPE.

18 MR. HAYES: THANK YOU.

19 THE COURT: ALL RIGHT. WELL, I'LL TELL YOU MY VIEW.  
20 FIRST OFF, IT'S 1412 OF TITLE 28 THAT GOVERNS TRANSFER  
21 OF CASES UNDER TITLE 11 AS DISTINCT FROM TRADITIONAL  
22 CIVIL CASES, WHICH IS 1404. AND IT DOESN'T INCLUDE  
23 CONVENIENCE OF WITNESSES AS ONE OF THE GROUNDS  
24 INTERESTINGLY. IT'S NOT AS BROAD AS 1404(A) IS.  
25 INDEED, THERE'S A BRAND NEW CASE OUT OF THE NINTH

1 CIRCUIT THAT HAS JUST COME DOWN THAT DISCUSSES IT  
2 SOMEWHAT.

3 I'M SATISFIED THAT ON THE PRESENT RECORD, THERE  
4 IS NO BASIS FOR DISMISSAL OF THIS INVOLUNTARY PETITION.  
5 THAT'S FIRST.

6 SECONDLY, THE REQUEST HAS BEEN MADE THAT I  
7 ABSTAIN. BUT THERE IS NOTHING FOR ME TO ABSTAIN IN  
8 FAVOR OF. ABSTENTION WORKS IF THERE WERE AN ADVERSARY  
9 PROCEEDING PENDING AS PART OF THIS, AND THERE WAS  
10 ALREADY A PROCEEDING PENDING SOMEWHERE ELSE THAT COULD  
11 GET THROUGH IT EXPEDITIOUSLY AND RESOLVE THAT QUESTION.  
12 THERE IS NO OTHER PLACE THAT HAS JURISDICTION.

13 SO WE'RE REALLY ONLY TALKING ABOUT TRANSFERRING  
14 VENUE IN THIS CONTEST. AND I'M NOT PREPARED ON THIS  
15 RECORD TO SAY THERE'S A BASIS FOR DOING SO. BUT I LEAVE  
16 IT OPEN FOR US TO CONSIDER.

17 IT SEEMS TO ME THAT IF MR. LOPEZ WANTS TO FIND  
18 OUT WHETHER THERE'S ANYTHING HERE, STEP ONE MAY BE TO  
19 AGREE TO ENTRY OF AN ORDER FOR RELIEF. WE GET A CHAPTER  
20 7 TRUSTEE IN THERE, AND THEN WE FIND OUT.

21 ONE OF YOUR CONCERNS, MR. HAYES, IS THIS NOTION  
22 THAT THE TRUSTEE CAN NEGOTIATE FOR THE VALUE OF  
23 MR. LOPEZ'S CAUSE OF ACTION AGAINST MR. STANLY, AND THAT  
24 MR. STANLY MAY BE ABLE TO BUY HIS PEACE THROUGH THE  
25 TRUSTEE. IF, IN FACT, THE ONLY LIABILITIES THAT

1 MR. LOPEZ HAS ARE THIS \$50,000 OWED ON THE STANLY  
2 JUDGMENT, AND A FEW OTHER THINGS, THEN MR. LOPEZ WOULD  
3 BE RECOGNIZED AS HAVING AN INTEREST, BECAUSE IN THEORY  
4 IT COULD BE A SOLVENT ESTATE IN DISCUSSING WHAT COULD  
5 HAPPEN TO THAT CAUSE OF ACTION. NOTE THAT THERE IS SOME  
6 RESIDUAL BORNE IN THAT CONTEXT BECAUSE HE WOULD HAVE AN  
7 INTEREST IN THAT CIRCUMSTANCE. IT'S ONLY WHEN WHATEVER  
8 THE TRUSTEE CAN GET FOR IT IS GOING TO BE LESS THAN  
9 WHAT'S OWED BY THE ESTATE THAT THE DEBTOR ENDS UP HAVING  
10 NO INTEREST AND IS UNABLE TO PARTICIPATE IN THAT PROCESS  
11 IN ANY KIND OF MEANINGFUL WAY. BUT GIVEN THOSE KINDS OF  
12 NUMBERS AND SO ON, AND GIVEN THE DEBTOR'S THEORY OF WHAT  
13 IT MAY BE WORTH, THERE MAY WELL BE SOMETHING THERE THAT  
14 WOULD BE RESIDUAL. AND SO THE DEBTOR IS NOT CLOSED OUT  
15 FROM JUST PARTICIPATING IN THAT PROCESS IF, IN FACT,  
16 THAT IS SOMETHING THAT OCCURRED. I HAVE NO IDEA WHETHER  
17 THAT WILL OCCUR.

18 SO AT THIS POINT IN TIME, THE MOTION TO CHANGE  
19 VENUE WILL BE DENIED, AS WILL THE MOTION TO DISMISS, AND  
20 ABSTAIN. BUT THAT WILL BE WITHOUT PREJUDICE. AND WE'LL  
21 TAKE ANOTHER LOOK AT IT. IF, IN FACT, WE WIND UP IN A  
22 FEW -- IN A SHORT PERIOD OF TIME IN A MONTH OR TWO, THE  
23 TRUSTEE SAYS THERE'S NOTHING HERE THAT I WANT TO PURSUE  
24 AND FILES A REPORT OF NO DISTRIBUTION, THAT WE MAY  
25 EITHER -- YOUR CLIENT MAY EITHER HAVE A DISCHARGE OR

1 WILL HAVE A BASIS FOR TRANSFER BECAUSE OF THE THINGS  
2 THAT MR. KEEHN HAS PARADED AS BEING POSSIBLE BASES FOR  
3 RECOVERY FOR THE BENEFIT OF CREDITORS BY A TRUSTEE,  
4 TRUSTEE IS DETERMINED NOT TO PURSUE FOR WHATEVER REASON.

5 MR. HAYES: I HAVE A RIGHT TO FILE AN ANSWER; RIGHT?

6 THE COURT: OH, ABSOLUTELY. SURE.

7 MR. HAYES: AND A TRUSTEE ISN'T GOING TO BE  
8 APPOINTED UNLESS THERE'S A MOTION.

9 THE COURT: NO. THERE'S GOING TO BE -- WELL, NO,  
10 ONCE THERE'S AN ORDER FOR RELIEF IN A 7, A TRUSTEE WILL  
11 BE APPOINTED.

12 MR. HAYES: ABSOLUTELY. BUT YOU'RE NOT ENTERING AN  
13 ORDER.

14 THE COURT: NO. YOU GET TO FILE AN ANSWER AND  
15 CONTEST IT. BUT, YOU KNOW, IF YOU FILE AN ANSWER AND  
16 CONTEST IT, THEN THERE WILL BE DISCOVERIES AS TO THE  
17 FACTS ON WHICH YOU PREDICATE YOUR ANSWERS.

18 MR. KEEHN: YOUR HONOR, JUST A POINT OF  
19 CLARIFICATION, I UNDERSTAND CRYSTAL CLEAR THE DENIAL OF  
20 THE VENUE MOTION IS WITHOUT PREJUDICE. BUT THAT WITHOUT  
21 PREJUDICE TAG DOESN'T GO TO THE OTHER TWO MOTIONS.

22 THE COURT: WELL, AS TO ABSTAIN, THERE'S NOTHING TO  
23 ABSTAIN IN FAVOR OF. AND AS TO THE MOTION TO DISMISS ON  
24 THE GROUNDS THAT IT'S BAD FAITH AT THIS POINT IN TIME --  
25 I MEAN, IF SUBSEQUENTLY SOMETHING TURNS UP THAT

1 PERSUADES ME THAT IT IS, I'D EXPECT TO HEAR ABOUT IT  
2 FROM MR. HAYES.

3 MR. HAYES: WELL, WOULD THE COURT GIVE ME A DEADLINE  
4 TO FILE AN ANSWER? I MEAN, I DON'T THINK THERE'S A  
5 STATUTORY DEADLINE.

6 MR. KEEHN: YOUR HONOR, IF THEY FILED FROM THE TIME  
7 THE SUMMONS WAS SERVED, THEY GET 30 DAYS. THEY HAVE NOW  
8 KNOWN ABOUT IT FOR A COUPLE OF MONTHS. I WOULD THINK  
9 IT'S FAIR IF AN ANSWER WAS FILED 15 DAYS FROM TODAY'S  
10 DATE.

11 MR. HAYES: OKAY.

12 THE COURT: IS 15 DAYS COMFORTABLE WITH YOU?

13 MR. HAYES: YES.

14 THE COURT: OKAY. THAT WOULD MAKE IT THE 6TH OF  
15 SEPTEMBER, WHICH IS A TUESDAY, THE FIRST DAY AFTER LABOR  
16 DAY.

17 MR. HAYES: YOUR HONOR, COULD YOU MAKE IT THE 7TH?

18 THE COURT: SURE. I HATE DEADLINES THAT FALL AFTER  
19 THREE-DAY WEEKENDS MYSELF. AND I HAVE NO PROBLEM WITH  
20 THAT ACCOMMODATION.

21 MR. HAYES: I HAVE TO MAIL IT, SO IT WOULD BE --  
22 ANYWAY, THE 7TH IS GREAT.

23 THE COURT: OKAY.

24 MR. HAYES: THANK YOU.

25 THE COURT: WE'LL SEE YOU ANON.

1 MR. HAYES: MR. KEEHN WILL SUBMIT AN ORDER?

2 MR. KEEHN: YES. I WILL. I DO HAVE A PROPOSED FORM  
3 OF ORDER.

4 MR. HAYES: THANK YOU, YOUR HONOR.

5 MR. KEEHN: THANK YOU, YOUR HONOR.

6 THE COURT: ALL RIGHT. WE'LL BE IN RECESS.

7 (PROCEEDINGS CONCLUDED AT 3:20 P.M.)

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1  
2 STATE OF CALIFORNIA


3 COUNTY OF SAN DIEGO  
4

5 I, COLLETTA JOHNSON, HEREBY CERTIFY:  
6

7 THAT I REPORTED IN SHORTHAND THE PROCEEDINGS HELD IN THE  
8 FOREGOING CAUSE ON THE 22ND DAY OF AUGUST, 2005;

9 THAT MY NOTES WERE LATER TRANSCRIBED INTO TYPEWRITING  
10 UNDER MY DIRECTION AND THAT THE FOREGOING 25 PAGES  
11 CONTAIN A CORRECT STATEMENT OF THE PROCEEDINGS.  
12

13 DATED THIS 5TH DAY OF SEPTEMBER, 2005.  
14

15  
16   
17 COLLETTA JOHNSON  
18 CSR NO. 12589  
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